

**REMARKS**

The Office Action dated September 6, 2007, has been received and carefully considered. Reconsideration of the current rejections in the present application is also respectfully requested based on the following remarks.

I. **THE INDEFINITENESS REJECTION OF CLAIMS 30-52**

On page 2 of the Office Action, claims 30-52 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the invention. In particular, the Examiner alleges that it is unclear how a balance would be stored in the adjustment account if the periodic retirement income payment is less than the guaranteed minimum payment. This rejection is hereby respectfully traversed.

Applicant refers the Examiner to the specification which describes the storing of balances in an adjustment account:

Variable immediate annuity 515 will return or pay out a benefit based on the investments comprising the account. At step 520, the benefit level actually realized by annuity 515 is compared to the guaranteed minimum periodic retirement income payment that, in one embodiment, is predetermined by the user. In another embodiment, the guaranteed minimum periodic retirement income payment is based on the total premium payments made during the accumulation period. **If the benefit level received is less than the guaranteed minimum periodic retirement income payment, then the adjustment account balance is increased by an amount equal to the difference between the benefit level and the guaranteed minimum periodic retirement income payment.** For instance, assume that the actual benefit realized by the annuity account is \$5,000 and that the guaranteed minimum periodic retirement income payment was predetermined by the user to be \$6,000. In this scenario the adjustment account 530 will show a balance of \$1,000, the additional payment required to provide the user with the guaranteed minimum periodic retirement income payment. According to one embodiment, the comparison of the benefit level with the guaranteed minimum periodic retirement income payment may be made by an adjustment module, which may be associated with the annuity 515.

Returning to step 520, if the benefit level realized by the variable immediate annuity 515 is greater than the guaranteed minimum periodic retirement income

payment, then at step 535 it is determined whether the adjustment account 530 shows a past balance. If it does, then a determination is made at step 540 as to whether the difference between the benefit level and the adjustment account balance is greater than the guaranteed minimum periodic retirement income payment, and, if it is, then the user is paid the difference between benefit level and the adjustment account balance. If, however, the difference between the benefit level and the adjustment account balance is less than the guaranteed minimum periodic retirement income payment, then the adjustment account balance is decreased by an amount equal to the difference between the benefit level and the guarantee minimum periodic retirement income payment. The user is then paid the guaranteed minimum periodic retirement income payment amount. According to one embodiment, steps 520, 535 and 540 are processed by an adjustment module, which may be associated with annuity 515. In yet another embodiment, should the user pass away during the annuitization period and/or the period certain, any adjustment balance is forgiven as a death benefit 545, as shown.

*See, e.g.,* Page 27, line 34 - Page 28, line 5 (emphasis added).

Applicant respectfully submits that, as described above, the claimed systems and methods are able to store a balance in an adjustment account when the periodic retirement income payment amount is less than the guaranteed minimum periodic retirement income payment amount.

In view of the foregoing, it is respectfully requested that the aforementioned indefiniteness rejection of claims 30-52 be withdrawn.

## II. THE ANTICIPATION REJECTION OF CLAIMS 30-36 AND 45-57

On page 3 of the Office Action, claims 30-36 and 45-57 were rejected under 35 U.S.C. § 102(e) as being anticipated by Dellinger (U.S. Patent No. 7,089,201). This rejection is hereby respectfully traversed.

Under 35 U.S.C. § 102, the Patent Office bears the burden of presenting at least a prima facie case of anticipation. In re Sun, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. Id. “In addition, the prior art

reference must be enabling.” Akzo N.V. v. U.S. International Trade Commission, 808 F.2d 1471, 1479, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986), cert. denied, 482 U.S. 909 (1987). That is, the prior art reference must sufficiently describe the claimed invention so as to have placed the public in possession of it. In re Donohue, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed. Cir. 1985). Such possession is effected only if one of ordinary skill in the art could have combined the disclosure in the prior art reference with his/her own knowledge to make the claimed invention. Id..

Regarding claim 30 and 55, the Examiner asserts that Dellinger discloses the claimed invention. Applicant respectfully disagrees. In particular, Applicant respectfully submits that Dellinger fails to teach, or even suggest, among other things, an “adjustment account” as recited in each of independent claims 30 and 55. For example, claim 30 recites an adjustment module for comparing the periodic retirement income payment amount and the guaranteed minimum periodic retirement income payment amount, and for outputting to the user at least the guaranteed minimum periodic retirement income payment amount, *with the adjustment module storing a balance in an adjustment account if the periodic retirement income payment amount is less than the guaranteed minimum periodic retirement income payment amount.*

Applicant respectfully submits that Dellinger does not teach or suggest an “adjustment account,” much less an adjustment account into which a balance is stored if the periodic retirement income payment amount is less than the guaranteed minimum periodic retirement income payment amount. In contrast, Dellinger merely teaches that in the event the benefit payment calculated without regard to the minimum falls below the minimum benefit payment guaranteed, a portion of the variable annuity benefit reserve held by the insurer will be liquidated in an amount sufficient to cover the shortfall. However, Applicant respectfully submits that

Dellinger does not teach or suggest any feature or functionality that even remotely comprises the storing of a balance in an adjustment account if the periodic retirement income payment amount is less than the guaranteed minimum periodic retirement income payment amount, as expressly required by independent claims 30 and 55.<sup>1</sup> For at least this reason, therefore, Applicant respectfully submits that claims 30 and 55 are allowable over Dellinger.

Regarding claims 31-36, 45-54 and 56-57, these claims are dependent upon independent claim 30 or 55. Thus, since independent claims 30 and 55 should be allowable as discussed above, claims 31-36, 45-54 and 56-57 should also be allowable at least by virtue of their dependency on independent claim 30 or 55. Moreover, these claims recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination.

In view of the foregoing, it is respectfully requested that the aforementioned anticipation rejection of claims 30-36 and 45-57 be withdrawn.

### III. CONCLUSION

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

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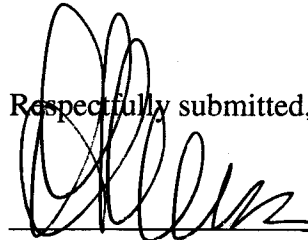
<sup>1</sup> As stated in MPEP § 2131, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Verdegaal Bros. v. Union Oil Co. of California, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

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